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In The
# Supreme Court Of The United States
October Term, 1991

QUILL CORPORATION
*Petitioner*

v.

STATE OF NORTH DAKOTA,
by and through its Tax Commissioner,
HEIDI HEITKAMP, *Respondent*

**On Petition for Writ of Certiorari to the Supreme Court of the State of North Dakota**

## BRIEF OF THE STATE OF CONNECTICUT, AND THE STATES OF ARIZONA, ARKANSAS, CALIFORNIA, FLORIDA, IDAHO, ILLINOIS, IOWA, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OHIO, OKLAHOMA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, VERMONT, VIRGINIA, WYOMING AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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## INTEREST OF THE AMICI CURIAE

The Signatory states submit this brief as *amici curiae* in support of Quill Corporation's petition for certiorari to review a decision of the North Dakota Supreme Court, *North Dakota v. Quill Corporation*, 490 N.W.2d 203 (1991). The *amici* support the petition for certiorari because they believe that the issue raised in *North Dakota v. Quill* is of vital importance to the states and warrants plenary review by this Court. Should certiorari be granted, the amici states expect to file a brief *amici curiae* supporting the decision of the North Dakota Supreme Court. Since this brief is being filed on behalf of the States of Connecticut and Arizona, Arkansas, California, Florida, Idaho, Illinois, Iowa, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Wyoming, by their Attorneys General, consent to its filing is not required. United States Supreme Court Rule 37.5.

The issue presented by this case is whether a state can require out-of-state mail order companies to collect the state's use tax without violating the Constitution. In *National Bellas Hess, Inc. v. Dept. of Revenue*, 386 U.S. 753 (1967), this Court held that mail order companies which do not maintain a physical presence within a state cannot, consistent with the Due Process and Commerce Clauses of the Constitution, be compelled to collect a use tax from that state's residents for purchases made for use within the state. In view of both the enormous changes in the scope and technology of the mail order industry since 1967 and the evolution of the doctrine of nexus in decisions of this Court over the past twenty years, the *amici* states believe that this Court's decision in *Bellas Hess* should be reexamined.

This issue is of importance to all 46 states[1] which have sales and use taxes. The issue is of vital importance to those 30 states, including North Dakota, which have amended their

[1] *See* 1A CCH All States Sales Tax Reporter, Para. 8-410 (1991).

tax statutes to specifically impose tax collection obligations upon out-of-state mail order sellers.[2]

It is estimated that, in 1985, the failure of mail order companies to collect such state use taxes resulted in a revenue loss of over $1 *billion* to the District of Columbia and the 46 states that have a sales and use tax. (Source: *Intergovernmental Perspective*, "A Special Report," Advisory Commission on Intergovernmental Relations (ACIR), Fall 1985, p.29, 30-31). For the year 1988, the estimated revenue loss to all states had grown to over $2 *billion*. (ACIR, *State and Local Taxation of Out-of-State Mail Order Sales*, Sept., 1987.)

Because of the erosion of the factual and legal underpinnings of *Bellas Hess* in the nearly quarter century since that decision, and because of the enormous impact that ruling has on state tax revenues, the continued application of *Bellas Hess* to interstate mail order companies is of grave interest to the *amici* states.

In fact, a maelstrom is currently brewing in state courts throughout the country, where the issue has been raised with conflicting results. In Pennsylvania and Connecticut, the State Supreme Courts have applied *Bellas Hess* to bar the imposition of a use tax collection responsibility on out-of-state mail order companies with no physical presence within the state. *See SFA Folio Collections, Inc. v. Bannon*, 217 Conn. 220, 585 A.2d 666, *cert. denied*, 59 U.S.L.W. 3838 (U.S. 1991) and *Bloomingdale's By Mail, Ltd. v. Commonwealth of Pennsylvania*, 567 A.2d 773 (Pa. Cmwlth. 1989), *aff'd per curiam*, 591 A.2d 1047 (Pa. 1991)[3]. Justices White and Blackmun dissented from the denial of certiorari in the Connecticut *SFA Folio* case. By contrast, two Tennessee courts have distinguished *Bellas Hess* based on the enormous changes since it was decided and upheld a Tennessee law similar to North Dakota's. *Bloomingdale's By Mail, Ltd. v. Huddleston*, Chancery Court, Davidson County, Tenn. (Mar. 11, 1991) and *SFA Folio Collections, Inc. v. Huddleston*, Chancery Court, Davidson County, Tenn. (Mar. 11, 1991). These cases are now on appeal.

This Court should reconsider the viability of *Bellas Hess* in view of the dramatic legal and social changes that have occurred in the twenty-four years since it was decided. As long

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[2] Alabama, Ala. Code § 40-23-1(5) as amended by Act 536, Laws 1986.
Arizona, Ariz. Rev. Stat. § 42-1401.5(b) amended by Sen. Bill 1141, ch. 312, Laws 1989.
Arkansas, Ark. Code § 26-53-102(4) (Michie Supp. 1987).
California, Cal. Rev. and Tax Code § 6203(d), (e), (f), (g), (h), (i).
Colorado, Colo. Rev. Stat. § 39-26-301 amended by H.B. 90-1003, Laws 1990.
Connecticut, Conn. Gen. Stat. § 12-407(12), (15) as amended by Act 41, Laws 1989.
Florida, Fla. Stat. § 212 as amended by S. 1244, Laws 1987.
Georgia, O.C.G.A. § 48-8-2(3)(H) as amended by Act 1289, H.B. 442, Laws 1990.
Idaho, Idaho Code § 63-3611 as amended by ch. 311, § 2.
Illinois, ch. 120, par. 439 as amended by P.L. 86-261.
Iowa, Iowa Code § 422.43 as amended by H.F. 2459, Laws 1988.
Kansas, Kan. Stat. Ann. § 79-3702(h) as amended by S.B. 488, Laws 1990.
Kentucky, Ky. Rev. Stat. § 139.340(2) as amended H. 870, Laws 1988.
Louisiana, La. Rev. Stat. Ann. § 47:3401(4)(1).
Massachusetts, Mass. Gen. Laws ch. 64H, § 1(5) as amended by ch. 202 (H.B. 6002), Laws 1988.
Minnesota, Minn. Stat. § 297A.21 (1990) as amended by 1991 Minn. Laws Ch. 291, art. 8, 13 and 14.
Mississippi, Miss. Code § 27-67-3 as amended by ch. 509 (S.B. 3035), Laws 1988
Missouri, Mo. Rev. Stat. § 144.605 as amended by H.B. 960, Laws 1990.
Nebraska, Neb. Rev. Stat. § 77-2702(21) as amended by L.B. 304, Laws 1987.
Nevada, ch. 372, Nev. Rev. Stat. as amended by S.B. 444, 1989.
New Jersey, N.J.S.A. 54:32B-2(i)(C).
New Mexico, N.M. Stat. Ann. § 7-9-10 as amended by S.B. 52, Laws 1990.
North Dakota, § 57-40.2-01(6) as amended by H.B. 1195, Laws 1987.
Ohio, Ohio Rev. Code 5741.01(H) amended by S.B. No. 303, Laws 1990.
Oklahoma, Okla. Stat. Ann. tit. 68 §§ 1354.1-1354.6 amended by H. 2026, Laws 1988.
Rhode Island, R.I. Gen. Laws § 44-18-23.
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Tennessee, Tenn. Code Ann. 67(6)-102(4)(J).
Utah, Utah Code Ann. § 59-12-102(9)(c); § 59-12-102(17)(b) as amended by S.B. 204, Laws 1990.
Vermont, Vt. Stat. Ann. tit. 32, ch. 233, § 9701(9) as amended by H.B. 891, Laws 1990.

[3] The Commonwealth of Pennsylvania is planning to file a petition for certiorari in *Bloomingdale's By Mail* on September 3, 1991.

as the issue remains unresolved, both the states and mail order companies will face uncertainty and inconsistency in the application of state use taxes. The *amici* thus urge this Court to grant the petition for certiorari.

## SUMMARY OF ARGUMENT

1. The ultimate issue presented by this case is whether, in view of both the enormous changes in communications technology and the mail order industry since 1967 and the evolution of the doctrine of nexus in decisions of this Court over the past twenty years, this Court should grant certiorari in order to reexamine its holding in *National Bellas Hess, Inc. v. Dept. of Revenue*, 386 U.S. 753 (1967). The North Dakota Supreme Court, in a thoughtful analysis, concluded that this Court would have reached a different result than it did in *Bellas Hess* if faced with the question today. In fact, this Court has not reconsidered this precise issue in the twenty-four years since *Bellas Hess* was decided, and plenary review is now warranted.

Because of the uncertainty that exists in this area of the law, and because of the enormous tax revenues at stake, a number of state courts throughout the nation have been confronted with the issue of the continuing viability of *Bellas* Hess and have arrived at conflicting conclusions. The Connecticut and Pennsylvania Supreme Courts, in contrast to North Dakota, applied *Bellas Hess* to bar state taxing authorities from requiring the collection of use tax by mail order companies with no physical presence in the state. *SFA Folio Collections, Inc. v. Bannon*, 217 Conn. 220, 585 A.2d 666, *cert. denied*, 59 U.S.L.W. 3838 (U.S. 1991) (White and Blackmun, J.J., dissenting); *Bloomingdale's By Mail, Ltd. v. Commonwealth of Pennsylvania*, 567 A.2d 773 (Pa. Cmwlth. 1989), *aff'd per curiam*, 591 A.2d 1047 (Pa. 1991). The Tennessee Supreme Court will soon be faced with the same issue after two Chancery Court judges distinguished *Bellas Hess* based on the enormous changes since it was decided and upheld a Tennessee use tax law similar



to North Dakota's. *Bloomingdale's By Mail, Ltd. v. Huddleston*, Chancery Court, Davidson County, Tenn. (Mar. 11, 1991), and *SFA Folio Collections, Inc. v. Huddleston*, Chancery Court, Davidson County, Tenn. (Mar 11, 1991). As long as the issue remains unresolved by this Court, both the states and mail order companies alike will face uncertainty and inconsistency in the application of state use taxes.

2. In finding the use tax collection statute at issue in *Bellas Hess* unconstitutional, this Court focused primarily on two points: the lack of physical presence by the mail order company within the taxing state, and the burden on interstate commerce caused by what the Court viewed as a "virtual welter of complicated obligations" in administering the tax collections. *Id.* at 759-60. Both of these factual underpinnings have been undermined by the enormous economic, technological, and social changes during the past two decades.

Dramatic advances in telecommunications and computer technology have created the functional equivalent of physical presence and have permitted a vastly expanded economic presence almost a hundred times greater in dollar volume than in 1967. In the 24 years since *Bellas Hess*, mail order sales have increased from an estimated $2.4 billion to an estimated $150 billion annually, with the estimated rate of growth at 8%-12% per year, and an estimated loss of tax revenue to the states at approximately $2 billion per year. These same advances in computer technology have significantly reduced the burden on the mail order companies of tax collection so that it is no more difficult than many other routine burdens associated with doing business on a multistate basis.

This case presents an opportunity for this Court to reconsider this issue in light of recent developments and to apply a nexus test which more accurately reflects the economic and technological facts of life in the present day mail order enterprise.

## ARGUMENT

### I. PLENARY REVIEW IS WARRANTED BECAUSE THE DECISION IN *NORTH DAKOTA v. QUILL* CONFLICTS WITH THIS COURT'S RULING IN *BELLAS HESS* AND WITH DECISIONS OF OTHER STATE SUPREME COURTS.

#### A. *North Dakota v. Quill* Conflicts With *Bellas Hess*

The North Dakota Supreme Court's ruling in *North Dakota v. Quill* conflicts with this Court's holding in *National Bellas Hess v. Dept. of Revenue, supra.* Contrary to the suggestion of the petitioner however, the North Dakota court did not simply "refus[e] to apply" Supreme Court precedent. (Petitioner's brief, 9). Rather, noting that this Court "has not revisited this precise issue since 1967," *North Dakota v. Quill,* 490 N.W.2d at 207, Pet. App. A9[4], the Court undertook a thoughtful, detailed analysis of the factual and legal bases for *Bellas Hess,* tracing the evolution over the past quarter century both of the mail order industry and of due process and commerce clause jurisprudence. The North Dakota Court's conclusion that, given the present case and present economic and technological realities this Court would alter the holding of *Bellas Hess,* is based on sound and scholarly reasoning. Only this Court, however, can definitively resolve this issue.

Petitioner suggests in its brief that the law in this area is clear and that this Court "has consistently applied *Bellas Hess* and has never held that communicating with customers by mail or telephone is sufficient to provide tax nexus." (Petitioner's Brief, 12) The law in this area is anything but clear, *see National Geographic Society v. California Board of Equalization,* 430 U.S. 551, 561 (1977) (Blackmun, J., concurring), and, while this Court has cited *Bellas Hess* on several occca-

[4] The opinion in *North Dakota v. Quill* is contained in the Appendix to the Petitioner's Brief. References in this brief to that appendix will be to "Pet. App."



sions, it has never reconsidered that decision in the context of the issues raised by this case. *Goldberg v. Sweet,* 488 U.S. 252 (1989), cited by the petitioner, did not even address the issue of a use tax; rather, it dealt with the proper apportionment of a tax on interstate communications and therefore provides little guidance on the present issue. The other cases cited by petitioner, *D.H. Holmes Co. v. McNamara,* 486 U.S. 24 (1988), and *National Geographic Society, supra,* dealt with use tax collection by companies that admittedly maintained stores and/or offices within the taxing state. In *none* of these cases was this Court asked to reconsider the application of *Bellas Hess* to out-of-state mail order companies or to reconsider its holding in light of the tremendous technological, economic, and legal changes that have occurred in the past two decades. The important issue decided by the North Dakota Court and raised in this petition remains an open one. It warrants full briefing and argument before, and resolution by, this Court.

#### B. *North Dakota v. Quill* Conflicts With Decisions of Other State Supreme Courts

As noted in the previous section, the holding at issue here, that a mail order company without a physical presence in a state may constitutionally be required to collect use taxes from that state's residents, is in conflict with recent decisions of the Supreme Courts of two other states. In *SFA Folio Collections, Inc., v. Bannon, supra,* the Connecticut Supreme Court applied *Bellas Hess* to a similar set of facts and concluded that the Due Process and Commerce Clauses prohibited Connecticut from requiring a mail order company with no direct physical presence in the state to collect the Connecticut use tax on purchases made for use within Connecticut. *Id.* Similarly, the Pennsylvania Supreme Court recently affirmed a lower court decision that reached the same conclusion. *Bloomingdale's By Mail, Ltd. v. Commonwealth of Pennsylvania,* 567 A.2d 773 (Pa. Cmwlth. 1989), *aff'd per curiam,* 591 A.2d 1047 (Pa. 1991). *See also Direct Marketing Assn. v. Ben-*

*net*, Civ. S-88-1067, ___ F.Supp. ___ (E.D. Cal. June 28, 1991); *Lands' End, Inc. v. California State Board of Equalization*, No. 620135 Superior Court of California (appeal pending), which are at variance with the North Dakota Court's holding in *Quill* in cases raising the identical issue.

By contrast, two Chancery Court judges in Tennessee have recently distinguished *Bellas Hess* based on the enormous changes that have occurred since it was decided, and upheld a Tennessee statute similar to North Dakota's. *Bloomingdale's by Mail, Ltd. v. Huddleston, supra*, and *SFA Folio Collections, Inc. v. Huddleston, supra*. These cases are now on appeal.

Mail order companies and states alike face uncertainty concerning the collection of state use taxes. In effect, three categories of states have been created: first, Connecticut and Pennsylvania, in which the obligation to collect use taxes may not be imposed on mail order companies with no in-state physical presence; second, the state of North Dakota, in which such a duty may be imposed; and third, all other states that collect sales and use taxes, in which the law is unclear. The result is that national mail order companies will be required to collect use taxes in some states but not in others depending on differing state court interpretations of the same federal constitutional provisions.

In order to provide certainty and consistency both to state taxing authorities and to mail order companies, the *amici* urge this Court to grant certiorari and permit this issue to be fully briefed and resolved.

## II. IN VIEW OF THE TECHNOLOGICAL, ECONOMIC, AND LEGAL DEVELOPMENTS WHICH HAVE OCCURRED OVER THE PAST TWO DECADES, THIS COURT SHOULD GRANT THIS PETITION IN ORDER TO REVIEW ITS HOLDING IN *NATIONAL BELLAS HESS V. DEPT OF REVENUE*.



It was nearly a quarter of a century ago that this Court decided that a mail order seller that does not maintain an actual physical presence in a state may not constitutionally be required to collect that state's sales and use tax on sales within the state. *National Bellas Hess, Inc. v. Dept. of Revenue*, 386 U.S. 753 (1967). In the twenty-four years since that decision, mail order sales have exploded into a major national industry with an economic presence in individual states that is often substantially more significant than mere physical presence. Also, in the intervening years, technological advances in computer software have rendered once complex and time-consuming tax calculations a relatively simple exercise. In light of these developments, the *amici* states urge this Court to revisit its decision in *Bellas Hess* and fashion a nexus test for state tax purposes that is consistent with the evolution of the mail order industry and current concepts of due process.

The Illinois use tax at issue in *Bellas Hess* contravened the Constitution in two related ways. First, the Court found that it violated the Due Process Clause because the mail order company had insufficient connection with, and received too little benefit from, the state to warrant the imposition of a tax collection responsibility on mail order sales. Second, the Court held that the use tax collection duty violated the Commerce Clause by placing a burden on interstate commerce unrelated to any benefits that the company received from the state. In reaching its conclusion, the Court focused primarily on the lack of physical presence by the mail order company within the taxing state and on the burden on interstate commerce caused by what the Court viewed as a "virtual welter of complicated obligations" in administering the tax collections. 386 U.S. at 759-60. In both of these areas, the passage of time has wrought significant changes which undermine the factual basis of the decision.

The focus of the first factor – the lack of a physical presence within the taxing state – reflected the then-current emphasis on physical presence as the touchstone in due process analysis. In the intervening years, however, the concept

of physical presence has been overtaken by technological, social, and economic events. The impact of current mail order companies on a state's residents has become much more dramatic and far-reaching than the mere physical presence of an agent acting on behalf of an out of state seller. Even the term "mail order company" has become obsolete, because direct marketing companies such as Quill now employ telephones, fax machines, electronic bulletin boards, and direct computer-to-computer linkups for a large percentage of their sales. Hartman, "Collection of the Use Tax on Out-of-State Mail-Order Sales," 39 Vanderbilt L.R. 993, 1007 (1986). Through the use of toll-free phone lines, with company service representatives available to customers around the clock, the modern day direct marketing companies have devised a scheme of continuous electronic solicitation and have created the functional equivalent of physical presence unknown and unimagined at the time of *Bellas Hess*.

The economic presence of these companies within targeted states is even more startling. For 1985, it is estimated that mail-order sales ranged as high as $150 *billion*,[5] with as much as $45 *billion* worth of these purchases untaxed. Hartman, *supra*, at 1006; McCray, "Overturning Bellas Hess: Due Process Considerations," 1985 B.Y.U.L. Rev. 265, n. 3. The rate of growth of direct marketing companies has been estimated at 8%-12% per year, substantially greater than the rate of growth of local retail sales. ACIR, *State and Local Taxation of Out-of-State Mail Order Sales*, 4 (April 1986).

The effect on state tax revenues is just as dramatic. The loss in tax revenue from out-of-state sales is estimated at $1 billion in 1985, and as much as $2 billion in 1988. Hartman, *supra*, at 1007; ACIR, *State and Local Taxation of Out-of-State Mail Order Sales*, Sept., 1987. The loss of in-state business due to the competitive disadvantage to local sellers who must collect sales and use taxes is incalculable.

[5] This figure stands in contrast to the $2.4 billion in mail order sales considered by the *Bellas Hess* court in 1967.



Out-of-state direct marketing companies like Quill have thus exploited and invaded local markets, and they have been successful in part due to the competitive advantage they retain over local businesses because they do not have to collect use taxes. For the petitioner to demand a continuation of this discrimination on Commerce Clause grounds is to turn the Constitution upside down. The purpose of the Commerce Clause has never been to provide an *advantage* to certain types of interstate business, but merely to create a level playing field on which both local and out-of-state businesses could compete fairly. *See Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). Nor is it "a purpose of the Commerce Clause to protect state residents from their own state taxes."[6] *Goldberg v. Sweet*, 488 U.S. at 266.

To say that mail order companies such as Quill derive no benefit from the states they target is to ignore the obvious. First and foremost, these companies enjoy a substantial and profitable economic market, a market made possible by state government policies which ensure a smoothly functioning infrastructure and economy. *Hartman, supra*, at 1014. Second, these companies depend on the target states to dispose of the hundreds of millions of catalogs they send into each state annually. The problems of garbage disposal and landfill overflow which were barely recognized at the time of *Bellas Hess* are now major environmental concerns.[7] In return for the benefits they receive, mail order companies such as Quill are being asked not to *pay* a use tax, but merely to *collect* one.

[6] The obligation to pay the use tax is on the customer who buys the product from an out-of-state seller. However, due to the practical impossibilities of collecting the tax directly from the purchaser, the customer effectively escapes paying it if the mail order companies do not collect it at the time of sale. *Hartman, supra*, at 1013.

[7] The Connecticut and North Dakota courts considered the benefit to mail order companies of a state's disposal of catalogs, and arrived at opposite conclusions. The Connecticut Supreme Court dismissed the tax commissioner's argument that the disposal provided a benefit to the companies

*(continued)*

The burden on interstate commerce that troubled the Court in *Bellas Hess* was the administrative burden on mail order companies of collecting and forwarding use taxes to state officials. 386 U.S. at 759-60. The technological revolution of the past twenty years, however, has fundamentally changed this burden in a way that the Court could not have foreseen. The calculation of the various sales and use tax rates for each state, which would have been extremely difficult in 1967, can be accomplished with relative ease today. Even inexpensive computer systems can now identify and update tax rates and exemptions based on the customer's zip code, compute the tax owed, and generate tax forms to be filed by the company in each taxing state. *Hartman, supra,* at 1011-12. Far from embroiling national mail order companies in "a virtual welter of complicated obligations to local jurisdictions," *Bellas Hess,* 386 U.S. at 759-60, the administrative duties associated with collecting the use tax are now no more complicated than many of the other elements involved in running a major interstate business.[8]

Ironically, the developments in computer and telecommunications technology that make multi-state tax collections feasible have been the basis for the explosive growth of the mail order industry itself. Companies such as Quill depend

[7] *(continued)*
in a two sentence footnote, holding that, because the catalogs once delivered are the property of the recipient rather than the company, the company obtains no benefit from their disposal. *SFA Folio Collections, Inc. v. Bannon, supra,* 217 Conn. at 228 n. 6. The North Dakota Court carefully considered and rejected the Connecticut Court's conclusion as "simplistic," noting that most catalogs have not been requested by, and may not be wanted by, the consumer to whom they are sent. They are mailed to him at the initiation of, and perceived advantage to, the mail order company, which must "derive[] some measure of benefit from the entity that is ultimately responsible for disposing of the veritable mountain of trash created thereby." *Quill, supra,* 470 N.W.2d. at 219, A34-A35.

[8] Notably, large retail chains with stores in every state, like Sears and J.C. Penney, which also maintain a separate mail order division, have always been obligated to collect use taxes from their mail order customers in every state. Apparently, they have been able to cope with the required paperwork and calculations.



for their very existence on the availability of sophisticated computer systems permitting them to target and reach customers throughout the nation, to process their orders efficiently, and to ship their merchandise quickly and accurately. They depend equally on space-age telecommunications systems that allow customers to place orders and receive service around the clock.

It is somewhat disingenuous for these companies, who have used computer technology to their great advantage and profit, to complain now that the burden of computing tax rates is constitutionally unendurable. The fact is that this supposed burden is no greater than other burdens associated with doing business on a multi-state basis, and is no reason to exempt these companies from the purely administrative duty of collecting and transmitting the use tax to the states whose citizens are providing their profits.

This is the reality of the present day mail order business – an economic enterprise that is light-years removed from what it was in 1967. *Bellas Hess,* with its rigid dependence on physical presence as the *sine qua non* of tax nexus,[9] remains a constitutional precedent frozen in time.

In other areas of the law, this Court has been willing to modify its traditional commerce clause analysis when technological changes have made the old rules unworkable. *See Goldberg v. Sweet,* 488 U.S. at 263-265. It has also demonstrated a willingness in the personal jurisdiction context to

[9] This limited approach is similar in concept to the approach once espoused by this Court with regard to state corporation income/franchise taxes. In *Spector Motor Service v. O'Connor,* 340 U.S. 602 (1951), the Court held that a franchise tax measured by income cannot be validly applied to a corporation conducting interstate commerce even though the tax was nondiscriminatory and fairly apportioned. In *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1978), a unanimous Court overruled *Spector.* In place of a rule with "no relationship to economic realities," *id.* at 279, this Court established a comprehensive four-prong Commerce Clause analysis to be applied when interstate business is made the subject of a state tax.

move away from bright-line physical presence rules when the situation warrants, and to adopt a more flexible test that weighs all relevant factors. *See Burger King v. Rudzewicz*, 471 U.S. 462, 485-86 (1989).

The *amici* urge this Court to use this case to apply a similar, more realistic test here, one that assesses the contacts with and benefits derived from the taxing state against the burden of compliance imposed on the out-of-state company. This would more accurately reflect the economic and technological realities of the present day mail order business.

## CONCLUSION

For the reasons contained herein, the *amici* urge this Court to grant certiorari in order to hear argument on and reconsider the constitutionality of requiring an out-of-state mail order company to collect use taxes on products sold to that state's residents.

RESPECTFULLY SUBMITTED,

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